

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

CHARLES SWINT, <div style="text-align: right; padding-right: 20px;">Plaintiff,</div>)	
)	
)	C.A. No. 23-232 Erie
)	
v.)	
)	
L. J. OLIVER, et al, <div style="text-align: right; padding-right: 20px;">Defendants.</div>)	District Judge Susan Paradise Baxter Magistrate Judge Richard A. Lanzillo

MEMORANDUM ORDER

Plaintiff, an inmate incarcerated at the State Correctional Institution at Albion, Pennsylvania (“SCI-Albion”) initiated this *pro se* civil rights action by filing a complaint with the Commonwealth Court of Pennsylvania, on or about April 6, 2023. [ECF No. 1-1]. The Commonwealth Court transferred the matter to the Court of Common Pleas of Erie County, Pennsylvania, and Defendants subsequently removed the matter to this Court pursuant to a Notice of Appeal dated August 8, 2023. [ECF No. 1]. The matter was referred to Chief United States Magistrate Judge Richard A. Lanzillo for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

Presently pending before the Court is Plaintiff’s motion for preliminary injunction [ECF No. 41]. The motion seeks an injunction requiring prison officials to transfer him to another correctional facility “or someone is going to die, that’s how scared I am.” The motion is based on allegations that, on September 22, 2023, an inmate threatened Plaintiff in an effort to extort money from him, and that Plaintiff responded by arming himself with a “knife and a lock in a

sock,” which resulted in Plaintiff being placed in the Restricted Housing Unit (“RHU”) for sixty days. (*Id.* at ¶ 2). Plaintiff asserts in his motion that, upon his release to general population on December 20, 2023, he is “going to kill Capt. Floyd and Patricia Thompson immediately my first chance” and “is killing someone in Administration soon as the[y] release me” because “someone has to feel the anxiety and panic I feel every day.” (*Id.* at ¶ 12).

On December 11, 2023, Chief Magistrate Judge Lanzillo issued a Report and Recommendation (“R&R”), recommending that Plaintiff’s motion for injunctive relief be denied because he has failed to demonstrate either a substantial likelihood of success on the merits or an imminent risk of irreparable harm [ECF No. 45]. Plaintiff has since filed timely objections to the R&R [ECF No. 46], in which he raises additional concerns related to circumstances he has allegedly faced since the time he filed his motion. However, these matters were not before Judge Lanzillo when he made his recommendation, and have been presented here, for the first time, on objections. Thus, they will not be considered. *See Murr v. U.S.*, 200 F.3d 895, 902 n.1 (6th Cir. 2000) (collecting cases and noting that “absent compelling reasons, [the Magistrate Judge Act] does not allow parties to raise at the district court stage new arguments or issues that were not presented to the magistrate”).

After *de novo* review of the motion and relevant documents in the case, together with the report and recommendation and objections thereto, the following order is entered:

AND NOW, this 22nd day of January, 2024;

IT IS HEREBY ORDERED that Plaintiff’s motion for preliminary injunction [ECF No. 41] is DENIED. The report and recommendation of Chief Magistrate Judge Lanzillo, issued

December 11, 2023 [ECF No. 45], is adopted as the opinion of the court.


SUSAN PARADISE BAXTER
United States District Judge

cc: The Honorable Richard A. Lanzillo
Chief U.S. Magistrate Judge